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In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 496

MARIA GORUN and PARASCHIVA GIURGIU,
on behalf of themselves, and all others similarly situated,
Appellants,

vs.

VICTOR H. FALL and LESTER H. LOBLE, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA.

JURISDICTIONAL STATEMENT.

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MARIA GORUN and PARASCHIVA GIURGIU,
on behalf of themselves, and all others similarly situated,
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VICTOR H. FALL and LESTER H. LOBLE, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

JURISDICTIONAL STATEMENT.

Appellants appeal from the final order and judgment of the United States District Court for the District of Montana, entered on August 6, 1968, denying the plaintiffs' motion for summary judgment, granting defendants' motion to dismiss and dismissing the complaint in this cause, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court for the District of Montana is unreported, and is attached hereto as Appendix A.

JURISDICTION.

This suit was brought under 28 U. S. C. Section 2281, as a class suit pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, to challenge the constitutionality and to enjoin the enforcement of Section 91-520, Revised Codes of Montana, 1947, as amended. The judgment of the District Court was entered on August 6, 1968, and notice of appeal was filed in that court on August 14, 1968. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253 and 2101 (b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Toomer v. Witsell*, 334 U. S. 385; *St. John v. Wisconsin Employment Relations Board*, 340 U. S. 441; *Ferguson v. Skrupa*, 372 U. S. 726.

QUESTIONS PRESENTED.

1. Whether Montana's so-called "Iron Curtain" statute, Section 91-520, is unconstitutional?

2. Whether the actions of the Federal Government in amending its regulations (Treasury Department Circular No. 655, as amended) so as to delete Romania from the list of restricted areas to which the transmittal of public funds is prohibited, and, thereafter releasing blocked funds and assets belonging to Romanian nationals, preclude Montana from applying Section 91-520, Revised Code of Montana 1947, as amended, to the succession rights of residents and nationals of Romania?

STATUTES INVOLVED.

Revised Codes of Montana, 1947, Section 91-520, as amended, included in Appendices A and C, and Title 31, Section 211.3(a); Title 8, Section 511, C. F. R., 25 Federal Regulations 3458, 3526, set forth in Appendix B hereto.

STATEMENT.

Appellants are heirs and legatees of John Precup Giurgiu who died testate in Montana on June 22, 1966, and they are residents of Romania. Appellants will inherit from that estate unless prevented by the provisions of Revised Code of Montana, 1947, Section 91-520, as amended.

Appellants filed a class action (Appendix C), under Rule 23 on their own behalf and on behalf of all other residents of Romania similarly situated. Their complaint seeks a judgment that Section 91-520 of the Montana laws violates the Constitution of the United States, and also an injunction restraining the judges of the Probate Court wherein the estate is being administered and the State Treasurer, appellees herein, from applying and enforcing it.

As a result of the decisions of this Court in *Zschernig v. Miller,* 389 U. S. 429, and *Goldstein v. Cox,* 389 U. S. 581, appellants filed a Motion for Summary Judgment with Affidavit on the authority of these cases (Appendix D). The three judge District Court denied the motion for summary judgment, granted appellees motion to dismiss and dismissed the complaint of the appellants.

THE QUESTIONS ARE SUBSTANTIAL.

The issues involved in this appeal are similar to those raised in *Zschernig* and *Goldstein.* These issues are of importance in the area of foreign affairs and international developments.

1. The Montana statute provides for withholding of the inheritance in trust and ultimate escheat in cases where a non resident alien claims money or property unless two requirements are fulfilled:

(a) the reciprocal right of United States citizens to inherit property left by a deceased person in such foreign country; and

(b) the movement of money or property out of such foreign country to an heir, devisee and/or legatee in the United States without restriction by the foreign country.

These two provisions, identical in substance and essence, are found in the Oregon statute which was declared constitutionally invalid in *Zschernig*.

The three judge court in this case stated, however, that *Zschernig* did not overrule *Clarke v. Allen*, 331 U. S. 503, which "sustained the validity of a California reciprocity statute." The court below admitted, nevertheless, that *Zschernig* "* * * did hold that an Oregon statute as applied had potential for the disruption or embarrassment of our relations with other countries, intruded upon a federal function and was therefore unconstitutional." Nevertheless, the court went on to decide that the Montana statute may be applied in a manner which would not be "offensive to the Federal Constitution." The distinction is untenable. We believe that the conclusions to be drawn from *Zschernig* indicate clearly that statutory restrictions as contained in the Montana statute here under attack constitute an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress. In this respect, this Court stated:

> "* * * Yet, such forbidden state activity * * * has infected *each* of the three provisions of Section 111.070, as applied by Oregon." (Emphasis ours.)

This Court concluded that the application of the Oregon statute and similar statutes results in an unconstitutional involvement by the state in foreign affairs.

We submit that the Montana statute cannot be applied effectively without involving the Montana courts in the kind of foreign relations activities proscribed by the *Zschernig* decision. The declarations of Mr. Justice Stewart, in his concurring opinion in *Zschernig,* in which he was joined by Mr. Justice Brennan, are extremely appropriate. He stated, pertinent hereto, as follows:

> "I believe that all three of the statutory requirements on their face are contrary to the Constitution of the United States. In my view, *each* of the three provisions of the Oregon law suffers from the same fatal infirmity. *All three launch the State upon a prohibited voyage into a domain of exclusively federal competence.* Any realistic attempt to apply any of the three criteria would necessarily involve the Oregon courts in an evaluation, either expressed or implied, of the administration of foreign law, the credibility of foreign diplomatic statements, and the policies of foreign governments. Of course, state courts must routinely construe foreign law in the resolution of controversies properly before them, *but here the courts of Oregon are thrust into these inquiries only because the Oregon legislature has framed its inheritance laws to the prejudice of nations whose policies it disapproves and thus has trespassed upon an area where the Constitution contemplates that only the National Government shall operate."* (Emphasis supplied.)
>
> A substitution of Montana in the place of Oregon in the foregoing declaration readily reveals that the Montana statute "suffers from the same fatal infirmity."

The controlling effect of *Zschernig* regarding similar statutes is evidenced by recent state court decisions; *Estate of Harry Kurt Kraemer,* decided June 5, 1968, Superior Court of Los Angeles County, Probate Division, *Estate of Semen Struckmanczuk,* decided April 17, 1968,

Orphans' Court of Philadelphia County, Pennsylvania, and *Estate of Esther Kish*, Supreme Court of New Jersey, A-152, September Term 1967, decided July 31, 1968.

2. The action of the Federal Government in concluding the Financial Agreement of 1960 with Romania, and the consequent amendment of Treasury Department Circular 655, permitting the transmittal of public funds to Romania, forbids Montana from limiting or in any way proscribing the right of a resident in or national of Romania to receive the proceeds of a Montana estate.

Admittedly, the inclusion or removal of a foreign government from the Treasury List of the United States (Circular 655, 31 C. F. R. 211.3), is a political determination involving the conduct of our foreign affairs. This has been evidenced, once again, by the recent action of our Federal Government whereby Treasury Circular 655 was amended to remove the country of Czechoslovakia therefrom. The amendment to the federal regulation accomplishing this action contains the explicit statement, as follows: "* * * the amendment involves a foreign affairs function of the United States" (Federal Register, June 25, 1968, Volume 33, Number 123, pp. 9302, 9303—Appendix E annexed hereto).

That the action of the Federal Government in concluding the Financial Agreement of 1960 with Romania constitutes new foreign policy with relation to that country is clear. Agreements entered into by our government have the same force and effect and attain the same stature as treaties in the formulation of foreign policy. In view of this agreement, the Secretary of the Treasury of the United States determined that residents and nationals of Romania would have the use, benefit or control of money transmitted to them from the United States. This determination by the Executive Department of the United States

overrides any conflicting determination that the courts of Montana may seek to make pursuant to the policy of the state as set forth in Section 91-520 of the Revised Codes of Montana. With regard hereto, this Court, in *Kolovrat v. Oregon,* 366 U. S. 187 (1961), declared:

> "* * * state policies as to rights of aliens to inherit must give way under our Constitution's Supremacy Clause to 'overriding' federal treaties and conflicting arrangements."

For "state law must yield when it is inconsistent with, or impairs the policy or provisions of a treaty, or of *an international compact or agreement.*" *United States v. Pink,* 315 U. S. 203, 231 (1942). (Italics ours.)

The Court also stated in *Pink,* page 233:

> "No state can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the State; it is vested in the national government exclusively * * *."

It is submitted that the decision of the district court fails to conform to the rationale and decision of this Court in *Zschernig* and *Goldstein v. Cox,* and that it authorizes the state courts to engage in activities prohibited by the Constitution of the United States. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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